

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Jack D. Robinson et al.

Application No.: 09/686,206

Filed: October 10, 2000

For: SYSTEM AND METHOD TO
CONFIGURE AND PROVIDE A
NETWORK-ENABLED THREE-
DIMENSIONAL COMPUTING
ENVIRONMENT

Examiner: Christensen, Scott B.

Group Art Unit: 2144

Confirmation No.: 6139

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37(a)

This is an appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner of Group 2144, February 19, 2008, which finally rejected claims 1-20 in the above-identified application. This Appeal Brief is hereby submitted pursuant to 37 C.F.R. § 41.37(a).

CERTIFICATE OF TRANSMISSION

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/Andreas Radke/
Andreas Radke

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the full interest in the invention, ADDnCLICK, Inc., 1079 Crystal Springs Drive, Vacaville, California 95688.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the instant appeal.

III. STATUS OF THE CLAIMS

Claims 1-20 are pending in the application and were finally rejected in an Office Action mailed February 19, 2008. No claim has been allowed, withdrawn, or objected to. Claims 1-20 are the subject of this appeal. A copy of claims 1-20 as they stand on appeal are set forth in Appendix A.

IV. STATUS OF AMENDMENTS

No amendments have been submitted subsequent to the Final Office Action mailed February 19, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellant's invention as claimed in claims 1-20 is directed to a computer network-based system and method to configure and provide network-enabled three-dimensional computing environments.

Independent claim 1 claims a computer-implemented method comprising: downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet (see e.g., page 15, lines 3-10); executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system (see e.g., page 15, line 3 to page 16, 3); providing the 3D computing environment representing a 3D desktop of a computer system in a 3D environment which is presented as a 3D desktop in a 3D room environment, wherein one or more icons of the 2D desktop environment are spatially displayed on multiple surfaces of the 3D room environment (see e.g., page 11, lines 3-13); receiving a two-dimensional application program; the interpreter dynamically converting the two-dimensional application program to a form useable in the three-dimensional computing environment (see e.g., page 15, line 17 to page 16, line 3); presenting content of the converted application program within the 3D computing environment to allow a user of the computer system to navigate the content of the application

program within the 3D computing environment (see e.g., page 15, lines 3-10); accessing a registry server over the Internet to download additional 3D graphical objects to be used in the 3D desktop, wherein the registry server is associated with a community having a plurality of members, and wherein the registry server is configured to maintain 3D graphical objects, including the downloaded 3D graphical object, used by the plurality of members including software updates to the 3D desktop (see e.g., Fig. 3; page 17 lines 3-16; page 18, lines 3-9); storing the downloaded 3D graphical objects in a repository within the computer system, wherein the repository is configured to store all graphical objects used by the 3D desktop, including graphical objects downloaded over the Internet, updates from the registry server, and user defined objects defined locally by a user of the computer system (see e.g., Fig. 3; page 17 lines 3-16; page 18, lines 3-9). Independent claim 2 is a machine-readable medium claim having limitations similar to those recited in claim 1.

Dependent claim 3 depends from claim 1 including a limitation wherein the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and wherein the 3D computing environment is installed from the 2D desktop environment (see e.g., Fig. 5; page 22 line 1 to page 23, line 17), wherein the 3D computing environment can be activated from the 2D desktop environment in response to a user request in which the 2D application program is converted by the interpreter into a 3D application and the graphical objects are presented in a 3D manner (see e.g., Fig. 4; page 20, line 1 to page 21, line 23), wherein the 3D computing environment can be deactivated in response to a user request in which the 2D application program is not converted into a 3D application and the graphical objects are presented in a 2D manner (see e.g., Fig. 4; page 20, line 1 to page 21, line 23), and wherein when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without having to display the 2D desktop environment first (see e.g., Fig. 4; page 20, line 1 to page 21, line 23). Dependent claim 12 includes limitations similar to those recited in claim 3.

Dependent claim 4 depends from claim 3 including developing 3D enabled applications using a software development kit (SDK) within the computer system, the 3D enabled applications developed by the SDK can be presented in a 3D manner in the 3D desktop; and accessing the registry server from the computer system over the Internet to download software updates associated with the SDK (see e.g., Fig. 3; page 15, lines 14-16; page 18, lines 3-9). Dependent claim 13 includes limitations similar to those recited in claim 4.

Dependent claim 5 depends from claim 4 including a limitation wherein the Web server comprises a maintenance system and database communicatively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library, wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops (see e.g., Fig. 3; page 15, line 2 to page 17, line 16). Dependent claim 14 includes limitations similar to those recited in claim 5.

Dependent claim 6 depends from claim 5 including purchasing the 3D environment development program from an e-commerce server over the Internet; in response to the purchase, the e-commerce server notifying the Web server to allow the computer system to download the purchased 3D environment development program from the Web server; and the ecommerce server subsequently delivering advertisement information to the computer system to be represented within the 3D desktop of the computer system (see e.g., Fig. 4; page 20, line 1 to page 21, line 23). Dependent claim 15 includes limitations similar to those recited in claim 6.

Dependent claim 7 depends from claim 6 including a limitation wherein executing the 3D environment development program within the computer system comprises installing a persistent kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop, wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and

presenting advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems and purchased from the e-commerce server, including user profiles, buying patterns, and searches (see e.g., Fig. 4; page 20, line 1 to page 21, line 23). Dependent claim 16 includes limitations similar to those recited in claim 7.

Dependent claim 8 depends from claim 7 including a limitation wherein the registry server is accessible from the e-commerce server to obtain information about users of the e-commerce server, such that the e-commerce server can generate targeted advertising and product offerings for a particular user (see e.g., Fig. 4; page 20, line 1 to page 21, line 23). Dependent claim 17 includes limitations similar to those recited in claim 8.

Dependent claim 9 depends from claim 5 including accessing a community server over the Internet via the 3D desktop, the community server providing information and services to a community having a plurality of members; activating a 3D version of the community server via a user interface of the community server; and in response to the activation, the community server communicating with a 3D environment spatial shell component having a 3D spatial representation of a 2D environment previously available from the community server, such that, instead of viewing content provided by the community server in a 2D manner, a user of the computer system can access the same content in a 3D manner using the 3D desktop of the computer system (see e.g., Fig. 5; page 22, line 1 to page 23, line 17). Dependent claim 18 includes limitations similar to those recited in claim 9.

Dependent claim 10 depends from claim 9 including navigating content of the community server in a 3D manner via the 3D desktop of the computer system; and interacting with other members of the community in a 3D manner via the 3D desktop of the computer system (see e.g., Fig. 5; page 22, line 1 to page 23, line 17). Dependent claim 19 includes limitations similar to those recited in claim 10.

Dependent claim 11 depends from claim 10 including wherein executing the 3D environment development program within the computer system comprises installing a persistent

kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop, wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting the advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems of a plurality of members of the community having content associated with the community (see e.g., Fig. 4; page 20, line 1 to page 21, line 23). Dependent claim 20 includes limitations similar to those recited in claim 11.

VI. GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

- A. Whether claims 3-10 and 12-19 are definite under 35 U.S.C. §112, first paragraph.
- B. Whether claims 1-2 are obvious in view of U.S. Patent No. 7,168,051 under the obviousness type double patenting rejection.
- C. Whether claims 1-2 are patentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,088,032 of Mackinlay (“Mackinlay”).
- D. Whether claims 3 and 12 are patentable under 35 U.S.C. §103(a) over Mackinlay.
- E. Whether claims 4 and 13 are patentable under 35 U.S.C. §103(a) over Mackinlay.
- F. Whether claims 5 and 14 are patentable under 35 U.S.C. §103(a) over Mackinlay.
- G. Whether claims 6 and 15 are patentable under 35 U.S.C. §103(a) over Mackinlay.
- H. Whether claims 7 and 16 are patentable under 35 U.S.C. §103(a) over Mackinlay.
- I. Whether claims 8 and 17 are patentable under 35 U.S.C. §103(a) over Mackinlay.

J. Whether claims 9 and 18 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of U.S. Published Application No. 2001/0019332 of Fisher (“Fisher”).

K. Whether claims 10 and 19 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher.

L. Whether claims 11 and 20 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher.

VII. ARGUMENT

The claims do not stand or fall together.

A. Claims 3-10 and 12-19 are definite under 35 U.S.C. §112, first paragraph.

Claims 3-10 and 12-19 were rejected under 35 U.S.C. §112, first paragraph. Specifically, the Office Action stated that claims 3 and 12 included a limitation of where a 3-D desktop can be activated and deactivated, which was not supported by the specification of the present application (see e.g., 2/19/2008 Office Action, pages 2-3).

Appellant respectfully disagrees. As described on pages 20-21 of present application, the 3-D desktop software can be downloaded, installed, and activated to convert a conventional 2-D desktop into a 3-D desktop environment. The specification further states that if a user chooses not to activate the 3-D desktop, the persistent client still operates and remains active to collect user information. It is respectfully submitted that one with ordinary skill in the art would interpret that the 3-D desktop software is an installable program which may be uninstalled or deactivated.

The Office Action further stated that claims 3 and 12 included a limitation where the 3-D desktop is displayed “without displaying the 2D desktop environment first,” although the Office Action acknowledged that the specification describes how the monitor immediately displays the 3-D desktop (see e.g., 2/19/2008 Office Action, pages 2-3).

Appellant respectfully disagrees. It is one of the goals of the present invention as claimed to install a 3-D desktop environment that dynamically convert the existing 2-D desktop into a 3-

D desktop environment by “immediately” converting and displaying the 3-D desktop without having to display the existing 2-D desktop first. If the computer had to display the existing 2-D desktop first, such a requirement totally destroys the purposes of the present invention as claimed.

Therefore, for the reasons set forth above, it is respectfully submitted that claims 3 and 12 are definite under 35 U.S.C. 112, first paragraph. Claims 4-10 and 13-19 depend from claims 3 and 12 respectively and thus, are definite for the similar reasons.

B. Claims 1-2 are not obvious in view of U.S. Patent No. 7,168,051 under the obviousness type double patenting rejection.

Claims 1-2 were rejected under the obviousness type double patenting rejection in view of claims 1 and 9 of U.S. Patent No. 7,168,051 (“the ‘051 patent”), which has been assigned to a common assignee of the present application.

It is, respectfully, claims 1-2 include certain limitations that are not included in claims 1 and 9 of the ‘051 patent and thus, are not obvious in view of claims 1 and 9 of the ‘051 patent. In fact, the limitations of the amended claims 1-2 and those recited in claims 1 and 9 the ‘051 patent are significantly different.

Specifically, for example, the allowed claims of the ‘051 patent do not include the limitations of accessing a registry server over the Internet to download additional 3D graphical objects to be used in the 3D desktop, where the registry server is associated with a community having a plurality of members, and the registry server is configured to maintain 3D graphical

objects, including the downloaded 3D graphical object, used by the plurality of members including software updates to the 3D desktop.

The allowed claims of the '051 patent also do not include the limitations of storing the downloaded 3D graphical objects in a repository within the computer system, where the repository is configured to store all graphical objects used by the 3D desktop, including graphical objects downloaded over the Internet, updates from the registry server, and user defined objects defined locally by a user of the computer system.

Therefore, it is respectfully submitted that the double patenting rejection is inappropriate. If the Board affirms the Office Action's double patenting rejection, a terminal disclaimer will be submitted when the present application is in condition of allowance.

C. Claims 1-2 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 1-2 stand or fall together. Claim 1 is the representative claim. As discussed above, Appellant's invention as claimed is directed to a computer network-based system and method to configure and provide network-enabled three-dimensional computing environments. It is respectfully submitted that the present invention as claimed includes limitations that are not disclosed by the cited references, individually or in combination.

Specifically, for example, independent claim 1 as amended recites as follows:

1. A computer-implemented method comprising:
downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet;
executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system;

providing the 3D computing environment representing a 3D desktop of a computer system in a 3D environment which is presented as a 3D desktop in a 3D room environment, wherein one or more icons of the 2D desktop environment are spatially displayed on multiple surfaces of the 3D room environment;
receiving a two-dimensional application program;
the interpreter dynamically converting the two-dimensional application program to a form useable in the three-dimensional computing environment;
presenting content of the converted application program within the 3D computing environment to allow a user of the computer system to navigate the content of the application program within the 3D computing environment;
accessing a registry server over the Internet to download additional 3D graphical objects to be used in the 3D desktop, wherein the registry server is associated with a community having a plurality of members, and wherein the registry server is configured to maintain 3D graphical objects, including the downloaded 3D graphical object, used by the plurality of members including software updates to the 3D desktop;
storing the downloaded 3D graphical objects in a repository within the computer system, wherein the repository is configured to store all graphical objects used by the 3D desktop, including graphical objects downloaded over the Internet, updates from the registry server, and user defined objects defined locally by a user of the computer system.

(Emphasis added)

Thus, independent claim 1 includes limitations of downloading a 3D desktop environment to be installed on the top of an existing 2D desktop of an operating system in a computer system, including installing an interpreter within the system. As a result, anything that is originally displayed as a 2D object can now be displayed as a 3D object dynamically using the interpreter. Further, independent claim 1 requires accessing a registry server to download further 3D graphical objects to be used in the 3D desktop and all of the objects used by the 3D desktop are stored in a repository within the local computer system. It is respectfully submitted that these limitations are not disclosed or suggested by the cited references.

Although Mackinlay discloses a 3D document workspace, such a workspace is not the same as a 3D desktop environment that interfaces the operating system of a computer system and a user. Mackinlay's document workspace is a specific application installed to manipulate certain

documents in a 3D way. It does not convert or replace the existing desktop of an operating system as required by claim 1 of the present application.

Even if, for the sake of argument, Mackinlay's document workspace may be considered as a desktop, Mackinlay's document workspace is not downloaded from a Web server, particularly, to convert or replace the existing desktop as part of the operating system.

Although the Office Action acknowledged that Mackinlay fails to disclose the limitations of downloading a 3D environment, executing the 3D development program, accessing a registry server, and storing the downloaded 3D graphical objects; nevertheless, the Office Action insisted that these limitations were obvious to one with ordinary skill in the art (see e.g., 2/19/2008 Office Action, pages 8-9).

However, the Office Action's alleged obviousness is not supported by Mackinlay and any other supported references. The above limitations are not disclosed or suggested anywhere in Mackinlay, particularly, for example, for downloading a 3D desktop to be installed on the top of an existing desktop of an operating system in a computer system. In fact, there is no mention within Mackinlay that the 3D document workspace is downloaded from a Web server to replace or convert an existing 2D desktop.

Although the rejection under 35 U.S.C. 103(a) was based on a single reference of Mackinlay, the Office Action further presented a CNET article and stated that only discloses Web download techniques (see e.g., 2/19/2008 Office Action, pages 9-10); however, there is no disclosure within the CNET article regarding downloading a 3D program to convert the existing 2D desktop into a 3D desktop including an interpreter that dynamically converts any 2D data into 3D data presentable in the 3D desktop.

Similarly, although the rejection under 35 U.S.C. 103(a) was based on a single reference of Mackinlay, the Office Action further presented U.S. Patent No. 6,677,964 comingled within the same rejection (see 2/19/2008 Office Action, page 11). It was not clear whether the rejection was based on a single reference or multiple references. The Office Action has not established a *prima facie* case to combine these references. Merely the fact that some of the terms were mentioned in these references does not necessarily read on the present invention as claimed.

It is respectfully submitted that the present invention as claimed is not about downloading software from a Web. Rather, the present invention as claimed is about downloading a software application from a Web to render an existing 2D desktop into a 3D desktop, including an interpreter to dynamically convert any 2D data into 3D data to be presented in the 3D desktop.

The Office Action has not established a *prima facie* case for the obviousness under 35 U.S.C. 103(a) in view of Mackinlay. It appears that the Office Action's alleged obviousness was purely based on the impermissible hindsight of Appellant's own disclosure. It would be impermissible hindsight to use Applicant's own disclosure against the Applicant.

Further, although Mackinlay discloses interpreting a Web page from a 2D Web page to a 3D Web page, there is no disclosure within Mackinlay of an interpreter that dynamically converts any 2D data into 3D data, where the interpreter is downloaded from a Web server and installed onto the local computer.

The Office Action stated that col. 5, lines 41-50 of Mackinlay discloses an interpreter as claimed in claim 1. Appellant respectfully disagrees. The cited section of Mackinlay is related to a description of a computer system, particularly a processor, which has nothing to do with an interpreter for dynamically converting operations of a 2D desktop into a 3D desktop environment. Specifically, the cited section of Mackinlay states:

“The processor 102 will be used to perform various operations in support of obtaining Web pages, converting Web pages into a suitable format for display in the document workspace and interpreting and carrying out movement gestures.” Mackinlay, col. 5, lines 41-45.

Thus, although Mackinlay mentions a term of “interpreting”, the meaning of such a term is completely different than the one recited in claim 1.

In order to anticipate a claim or render a claim obvious, each and every limitation of the claim must be taught by the cited references, individually or in combination. It is respectfully submitted that Mackinlay fails to disclose or suggest the limitations set forth above. Therefore, independent claim 1 is patentable over Mackinlay.

Similarly, independent claim 2 includes limitations similar to those discussed above. Similar arguments with respect to claim 1 are applied herein. Therefore, for reasons similar to those discussed above, independent claim 2 is also patentable over Mackinlay.

D. Claims 3 and 12 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 3 and 12 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 3 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 3 and 12 are patentable over Mackinlay.

In addition, for example, independent claim 3 includes limitations wherein the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and wherein the 3D computing environment is installed from the 2D desktop environment, wherein the 3D computing environment can be activated from the 2D desktop

environment in response to a user request in which the 2D application program is converted by the interpreter into a 3D application and the graphical objects are presented in a 3D manner, wherein the 3D computing environment can be deactivated in response to a user request in which the 2D application program is not converted into a 3D application and the graphical objects are presented in a 2D manner, and wherein when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without having to display the 2D desktop environment first. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, pages 12-14). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 3 is patentable over Mackinlay. Similarly, claim 12 includes limitations similar to those recited in claim 3. Therefore, in addition to the reasons applied to their respective independent claims, claims 3 and 12 are independently patentable over Mackinlay.

E. Claims 4 and 13 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 4 and 13 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 4 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 4 and 13 are patentable over Mackinlay.

In addition, for example, independent claim 4 includes limitations of developing 3D enabled applications using a software development kit (SDK) within the computer system, the 3D enabled applications developed by the SDK can be presented in a 3D manner in the 3D desktop; and accessing the registry server from the computer system over the Internet to download software updates associated with the SDK. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, pages 14-16). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 4 is patentable over Mackinlay. Similarly, claim 13 includes limitations similar to those recited in claim 4. Therefore, in addition to the reasons applied to their respective independent claims, claims 4 and 13 are independently patentable over Mackinlay.

F. Claims 5 and 14 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 5 and 14 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 5 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 5 and 14 are patentable over Mackinlay.

In addition, for example, independent claim 5 includes a limitation wherein the Web server comprises a maintenance system and database communicatively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library, wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, pages 16-17). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 5 is patentable over Mackinlay. Similarly, claim 14 includes limitations similar to those recited in

claim 5. Therefore, in addition to the reasons applied to their respective independent claims, claims 5 and 14 are independently patentable over Mackinlay.

G. Claims 6 and 15 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 6 and 15 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 6 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 6 and 15 are patentable over Mackinlay.

In addition, for example, independent claim 6 includes limitations of purchasing the 3D environment development program from an e-commerce server over the Internet; in response to the purchase, the e-commerce server notifying the Web server to allow the computer system to download the purchased 3D environment development program from the Web server; and the ecommerce server subsequently delivering advertisement information to the computer system to be represented within the 3D desktop of the computer system. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, pages 17-18). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears

that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 6 is patentable over Mackinlay. Similarly, claim 15 includes limitations similar to those recited in claim 6. Therefore, in addition to the reasons applied to their respective independent claims, claims 6 and 15 are independently patentable over Mackinlay.

H. Claims 7 and 16 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 7 and 16 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 7 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 7 and 16 are patentable over Mackinlay.

In addition, for example, independent claim 7 includes a limitation wherein executing the 3D environment development program within the computer system comprises installing a persistent kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop, wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems and purchased from the e-

commerce server, including user profiles, buying patterns, and searches. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, pages 19-21). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 7 is patentable over Mackinlay. Similarly, claim 16 includes limitations similar to those recited in claim 7. Therefore, in addition to the reasons applied to their respective independent claims, claims 7 and 16 are independently patentable over Mackinlay.

I. Claims 8 and 17 are patentable under 35 U.S.C. §103(a) over Mackinlay.

Claims 8 and 17 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 8 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 8 and 17 are patentable over Mackinlay.

In addition, for example, independent claim 8 includes a limitation wherein the registry server is accessible from the e-commerce server to obtain information about users of the e-

commerce server, such that the e-commerce server can generate targeted advertising and product offerings for a particular user. It is respectfully submitted that these limitations are also absent from Mackinlay.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action insisted that it was obvious to one with ordinary skill in the art without providing substantive support for its rejection (see 2/19/2008 Office Action, page 21). It is respectfully submitted that the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 8 is patentable over Mackinlay. Similarly, claim 17 includes limitations similar to those recited in claim 8. Therefore, in addition to the reasons applied to their respective independent claims, claims 8 and 17 are independently patentable over Mackinlay.

J. Claims 9 and 18 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher.

Claims 9 and 18 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 9 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 9 and 18 are patentable over Mackinlay in view of Fisher.

In addition, for example, independent claim 9 includes limitations of accessing a community server over the Internet via the 3D desktop, the community server providing information and services to a community having a plurality of members; activating a 3D version of the community server via a user interface of the community server; and in response to the activation, the community server communicating with a 3D environment special shell component having a 3D special representation of a 2D environment previously available from the community server, such that, instead of viewing content provided by the community server in a 2D manner, a user of the computer system can access the same content in a 3D manner using the 3D desktop of the computer system. It is respectfully submitted that these limitations are also absent from Mackinlay and Fisher.

Rather, although the Office Action acknowledged that Mackinlay failed to disclose the above limitations, the Office Action contended that Fisher discloses such limitations (see 2/19/2008 Office Action, pages 22-23). Specifically, Office Action contended that paragraph [0014] of Fisher discloses the above limitations, particularly, a community server having a community of multiple members. Appellant respectfully disagrees.

Rather, the cited section of Fisher describes completely different features. Specifically, the cited section of Fisher states:

“Preferably both the surface finish selector and the 3-dimensional display region form part of a Web page displayed by a web client running on the said display terminal. Preferably in this case each of the surface finish samples includes a link to an internet address, or other network address, of the corresponding texture file. This preferred approach imports textures into a live web page over the internet.” Fisher, paragraph [0014].

It is respectfully submitted that Fisher also fails to disclose or suggest the limitations set forth above and the Office Action has not established a *prima facie* case for the obviousness

rejection under 35 U.S.C. 103(a) in view of Mackinlay and Fisher. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 9 is patentable over Mackinlay in view of Fisher. Similarly, claim 18 includes limitations similar to those recited in claim 9. Therefore, in addition to the reasons applied to their respective independent claims, claims 9 and 18 are independently patentable over Mackinlay in view of Fisher.

K. Claims 10 and 19 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher.

Claims 10 and 19 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 10 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 10 and 19 are patentable over Mackinlay in view of Fisher.

In addition, for example, independent claim 10 includes limitations of navigating content of the community server in a 3D manner via the 3D desktop of the computer system; and interacting with other members of the community in a 3D manner via the 3D desktop of the computer system. It is respectfully submitted that these limitations are also absent from Mackinlay and Fisher.

Rather, the Office Action contended that Fig. 3 of Fisher discloses such a limitation.

Appellant respectfully disagrees. Rather, Fig. 3 of Fisher only shows an ordinary Web GUI that has nothing to do with a community or navigation of a community through a 3D environment.

It is respectfully submitted that Fisher also fails to disclose or suggest the limitations set forth above and the Office Action has not established a *prima facie* case for the obviousness rejection under 35 U.S.C. 103(a) in view of Mackinlay and Fisher. Rather, it appears that the Office Action again was based on the impermissible hindsight from the present application.

Therefore, for reasons set forth above, it is respectfully submitted that claim 10 is patentable over Mackinlay in view of Fisher. Similarly, claim 19 includes limitations similar to those recited in claim 10. Therefore, in addition to the reasons applied to their respective independent claims, claims 10 and 19 are independently patentable over Mackinlay in view of Fisher.

L. Claims 11 and 20 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher.

Claims 11 and 20 stand or fall together, which depend from, directly or indirectly, at least one of the above independent claims. Claim 11 is the representative claim. The reasons cited above with respect to the above independent claims are applicable and are incorporated by reference herein. Based on at least these reasons, claims 11 and 20 are patentable over Mackinlay in view of Fisher.

In addition, for example, independent claim 11 includes limitations similar to claim 7. For reasons similar to those set forth above with respect to claim 7, it is respectfully submitted that these limitations are also absent from Mackinlay and Fisher.

Therefore, for reasons set forth above, it is respectfully submitted that claim 11 is patentable over Mackinlay in view of Fisher. Similarly, claim 20 includes limitations similar to those recited in claim 11. Therefore, in addition to the reasons applied to their respective independent claims, claims 11 and 20 are independently patentable over Mackinlay in view of Fisher.

VIII. CONCLUSION

For the reasons stated above, claims 1-20 are patentable under 35 U.S.C. §103(a) over Mackinlay in view of Fisher. Appellant respectfully requests that the Board reverse the rejections of the claims 1-20 and direct the Examiner to enter a Notice of Allowance for claims 1-20.

Enclosed is the fee for filing a brief in support of an appeal as required under 37 C.F.R. § 1.17(c) and 41.20(b)(2).

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Appellant hereby requests such extension.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: July 17, 2008

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APPENDIX A: Claims on Appeal

(37 C.F.R. § 41.37(c)(1)(viii))

The claims on appeal read as follows:

1. (Previously Presented) A computer-implemented method comprising:
downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet;
executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system;
providing the 3D computing environment representing a 3D desktop of a computer system in a 3D environment which is presented as a 3D desktop in a 3D room environment, wherein one or more icons of the 2D desktop environment are spatially displayed on multiple surfaces of the 3D room environment;
receiving a two-dimensional application program;
the interpreter dynamically converting the two-dimensional application program to a form useable in the three-dimensional computing environment;
presenting content of the converted application program within the 3D computing environment to allow a user of the computer system to navigate the content of the application program within the 3D computing environment;
accessing a registry server over the Internet to download additional 3D graphical objects to be used in the 3D desktop, wherein the registry server is associated with an

community having a plurality of members, and wherein the registry server is configured to maintain 3D graphical objects, including the downloaded 3D graphical object, used by the plurality of members including software updates to the 3D desktop;

storing the downloaded 3D graphical objects in a repository within the computer system, wherein the repository is configured to store all graphical objects used by the 3D desktop, including graphical objects downloaded over the Internet, updates from the registry server, and user defined objects defined locally by a user of the computer system.

2. (Previously Presented) A data processing system-readable medium having a plurality of instructions executable by a data processing system embodied therein, wherein said instructions when executed cause said data processing system to:

download a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet;

execute the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system;

provide the 3D computing environment representing a 3D desktop of a computer system in a 3D environment which is presented as a 3D desktop in a 3D room environment, wherein one or more icons of the 2D desktop environment are spatially displayed on multiple surfaces of the 3D room environment;

receive a two-dimensional application program;
the interpreter dynamically convert the two-dimensional application program to a form
useable in the three-dimensional computing environment;
present content of the converted application program within the 3D computing
environment to allow a user of the computer system to navigate the content of the
application program within the 3D computing environment;
access a registry server over the Internet to download additional 3D graphical objects to
be used in the 3D desktop, wherein the registry server is associated with an
community having a plurality of members, and wherein the registry server is
configured to maintain 3D graphical objects, including the downloaded 3D
graphical object, used by the plurality of members including software updates to
the 3D desktop;
store the downloaded 3D graphical objects in a repository within the computer system,
wherein the repository is configured to store all graphical objects used by the 3D
desktop, including graphical objects downloaded over the Internet, updates from
the registry server, and user defined objects defined locally by a user of the
computer system.

3. (Previously Presented) The method of claim 1, wherein the 2D desktop environment is
an existing desktop environment as a part of the operating system of the computer system, and
wherein the 3D computing environment is installed from the 2D desktop environment, wherein
the 3D computing environment can be activated from the 2D desktop environment in response to
a user request in which the 2D application program is converted by the interpreter into a 3D

application and the graphical objects are presented in a 3D manner, wherein the 3D computing environment can be deactivated in response to a user request in which the 2D application program is not converted into a 3D application and the graphical objects are presented in a 2D manner, and wherein when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without having to display the 2D desktop environment first.

4. (Previously Presented) The method of claim 3, further comprising:
developing 3D enabled applications using a software development kit (SDK) within the computer system, the 3D enabled applications developed by the SDK can be presented in a 3D manner in the 3D desktop; and
accessing the registry server from the computer system over the Internet to download software updates associated with the SDK.

5. (Previously Presented) The method of claim 4, wherein the Web server comprises a maintenance system and database communicatively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library, wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops.

6. (Previously Presented) The method of claim 5, further comprising:

purchasing the 3D environment development program from an e-commerce server over the Internet;

in response to the purchase, the e-commerce server notifying the Web server to allow the computer system to download the purchased 3D environment development program from the Web server; and

the ecommerce server subsequently delivering advertisement information to the computer system to be represented within the 3D desktop of the computer system.

7. (Previously Presented) The method of claim 6, wherein executing the 3D environment development program within the computer system comprises installing a persistent kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop, wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems and purchased from the e-commerce server, including user profiles, buying patterns, and searches.

8. (Previously Presented) The method of claim 7, wherein the registry server is accessible from the e-commerce server to obtain information about users of the e-commerce server, such that the e-commerce server can generate targeted advertising and product offerings for a particular user.

9. (Previously Presented) The method of claim 5, further comprising:
accessing a community server over the Internet via the 3D desktop, the community server
providing information and services to a community having a plurality of
members;
activating a 3D version of the community server via a user interface of the community
server; and
in response to the activation, the community server communicating with a 3D
environment special shell component having a 3D special representation of a 2D
environment previously available from the community server, such that, instead
of viewing content provided by the community server in a 2D manner, a user of
the computer system can access the same content in a 3D manner using the 3D
desktop of the computer system.

10. (Previously Presented) The method of claim 9, further comprising:
navigating content of the community server in a 3D manner via the 3D desktop of the
computer system; and
interacting with other members of the community in a 3D manner via the 3D desktop of
the computer system.

11. (Previously Presented) The method of claim 10, wherein executing the 3D environment
development program within the computer system comprises installing a persistent kernel within
the computer system, wherein a user of the computer system is provided with a demonstration of
the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop.

wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting the advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems of a plurality of members of the community having content associated with the community.

12. (Previously Presented) The medium of claim 2, wherein the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and wherein the 3D computing environment is installed from the 2D desktop environment, wherein the 3D computing environment can be activated from the 2D desktop environment in response to a user request in which the 2D application program is converted by the interpreter into a 3D application and the graphical objects are presented in a 3D manner, wherein the 3D computing environment can be deactivated in response to a user request in which the 2D application program is not converted into a 3D application and the graphical objects are presented in a 2D manner, and wherein when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without having to display the 2D desktop environment first.

13. (Previously Presented) The medium of claim 12, further comprising developing 3D enabled applications using a software development kit (SDK) within the computer system, the 3D enabled applications developed by the SDK can be presented in a 3D manner in the 3D desktop; and

accessing the registry server from the computer system over the Internet to download software updates associated with the SDK.

14. (Previously Presented) The medium of claim 13, wherein the Web server comprises a maintenance system and database communicatively coupled to the registry server for periodic updates of 3D computing environment-based protocols, as well as graphical objects stored in the Web server as a library, wherein by storing the graphical objects in the maintenance system and database of the Web server, the SDK can be used by users to automatically generate 3D enabled Web pages without having the SDK on their desktops.

15. (Previously Presented) The medium of claim 14, further comprising:
purchasing the 3D environment development program from an e-commerce server over the Internet;
in response to the purchase, the e-commerce server notifying the Web server to allow the computer system to download the purchased 3D environment development program from the Web server; and
the ecommerce server subsequently delivering advertisement information to the computer system to be represented within the 3D desktop of the computer system.

16. (Previously Presented) The medium of claim 15, wherein executing the 3D environment development program within the computer system comprises installing a persistent kernel within the computer system, wherein a user of the computer system is provided with a demonstration of the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop.

wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in an unobtrusive 2D persistent window on the user's desktop for delivering and presenting the advertisement information to the user, wherein the registry server maintains information regarding downloads to a plurality of computer systems and purchased from the e-commerce server, including user profiles, buying patterns, and searches.

17. (Previously Presented) The medium of claim 16, wherein the registry server is accessible from the e-commerce server to obtain information about users of the e-commerce server, such that the e-commerce server can generate targeted advertising and product offerings for a particular user.

18. (Previously Presented) The medium of claim 16, further comprising:
accessing a community server over the Internet via the 3D desktop, the community server providing information and services to a community having a plurality of members;
activating a 3D version of the community server via a user interface of the community server; and
in response to the activation, the community server communicating with a 3D environment special shell component having a 3D special representation of a 2D environment previously available from the community server, such that, instead of viewing content provided by the community server in a 2D manner, a user of the computer system can access the same content in a 3D manner using the 3D desktop of the computer system.

19. (Previously Presented) The medium of claim 18, further comprising:
navigating content of the community server in a 3D manner via the 3D desktop of the
computer system; and
interacting with other members of the community in a 3D manner via the 3D desktop of
the computer system.

20. (Previously Presented) The medium of claim 19, wherein executing the 3D environment
development program within the computer system comprises installing a persistent kernel within
the computer system, wherein a user of the computer system is provided with a demonstration of
the purchased 3D desktop in order for the user to decide whether to activate the 3D desktop,
wherein if the user chooses not to activate the 3D desktop, the persistent kernel is still active in
an unobtrusive 2D persistent window on the user's desktop for delivering and presenting the
advertisement information to the user, wherein the registry server maintains information
regarding downloads to a plurality of computer systems of a plurality of members of the
community having content associated with the community.

APPENDIX B: Evidence

None.

APPENDIX C: Related Proceedings

None.